

Message Text

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NEA/INS - MR. OBER

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FM SECSTATE WASHDC

TO AMEMBASSY NEW DELHI

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E.O. 11652: N/A

TAGS: CGEN, IN, US

SUBJECT: CONSULAR CONVENTION

REF: (A) NEW DELHI 4926; (B) SHAMWELL-KREISBERG
LETTER, JANUARY 13, 1977; (C) STATE 65432

1. REF (B) BEING POUCHED SEPARATELY; HOWEVER, IN VIEW OF
TIME PROBLEM RESULTING FROM IMMINENT VISIT OF ROBERT HENNE-
MEYER FOR CONSULAR CONFERENCE, RELEVANT INFORMATION BEING
REPEATED IN THIS CABLE.

2. RE QUESTION RAISED PARA 2, REF (A), ON AUTOMOBILE
IMPORTATION RIGHTS FOR CONSULAR EMPLOYEES, DEPT. UNDER-
STANDS EMB.'S CONCERN, BUT BELIEVES THAT CURRENT LANGUAGE
IS ADEQUATE TO DEAL WITH SPECIFIC PROBLEM IDENTIFIED FOR
FOLLOWING REASONS: (1) ALTHOUGH "MOTOR VEHICLES" ARE
SPECIFICALLY MENTIONED IN PARA 1, WHICH REFERS TO IMPORTA-
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TION RIGHTS OF CONSULATES VIS-A-VIS CONSULAR PERSONNEL,
THEY ARE MENTIONED IN OPPOSITION TO THE TERM "ARTICLES,
WHICH ALSO APPEARS IN PARAS 2 AND 3; THUS, THERE IS NO
LEGITIMATE BASIS FOR ARGUING THAT "ARTICLES, DOES NOT
INCLUDE MOTOR VEHICLES; (2) SINCE THE CONVENTION WOULD PRO-
VIDE CONSULAR EMPLOYEES THE SAME DUTY-FREE ENTRY, RIVILEGES
AS ADMIN-TECHNICAL STAFF OF THE EMBASSY, DISCRIMINATION

PROBLEM DISAPPEARS.

3. ARTICLE 13 (PARA 1(D), REF C): "STEVE'S COMMENTS ABOUT THE POUCH ARE WELL-PLACED; HOWEVER, THE ISSUE OF POUCH ABUSE IS ONE WHICH HAS BEEN WITH US AND IS LIKELY TO CONTINUE TO BE WITH US FOR SOME TIME. WHILE IT IS COMMON KNOWLEDGE THAT THE 'OFFICIAL' NATURE OF POUCH CONTENTS OFTEN STRETCHES THE LIMITS OF THE TERM, THAT SITUATION WOULD BE FURTHER EXACERBATED BY LOOSENING THE BOUNDS OF ACCEPTABLE POUCH USE.;

4. ARTICLE 20, PARA 2(A) (REF C, PARA 1(H)): ,RESPECTING STEVE BLOCK'S QUESTION ON ARTICLE 20, PARA 2(A), THE DEPARTMENT HAS NEVER ENTERTAINED A THEORY THAT A GASOLINE TAX IS ONE IMPOSED WITH RESPECT TO PRIVATE IMMOVABLE PROPERTY AND, THUS, CONSIDERS THAT THIS KIND OF TAX WOULD NOT BE GOVERNED BY THIS PROVISION. RATHER, THE GASOLINE TAX WOULD ORDINARILY BE COVERED BY ARTICLE 20(1) OR, IF NOT A TAX SEPARATELY -- STATED AT THE TIME OF THE TRANS-ACTION, BY ARTICLE 20(2)(A). REGARDING THE LATTER, NO INTERNATIONALLY AGREED STANDARD FOR DEFINING INDIRECT TAXES HAS BEEN FORMULATED TO DATE IN VIEW OF THE LARGE VARIETY OF DIFFERENT TAXING PROCEDURES PREVAILING THROUGH-OUT THE WORLD; NEVERTHELESS, THE RULE OF THUMB FOLLOWED BY THE DEPARTMENT IS THAT A TAX, THE AMOUNT OF WHICH IS CLEARLY IDENTIFIABLE AT THE RETAIL STAGE (EX. \$2.95 PURCHASE AT PEOPLE'S DRUG, TO WHICH AN ADDITIONAL \$.15 TAX IS ADDED) FALLS WITHIN THE DEFINITION OF A DIRECT TAX, NOTWITHSTANDING THE PARTICULAR LABEL PLACED UPON IT BY LOCAL LAW.

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5. WITH ABOVE INFORMATION IN HAND, EMB. REQUESTED, IF IT HAS NOT ALREADY DONE SO, PREPARE CONSULAR CONVENTION IN FINAL FORM FOR DELIVERY TO GOI ASAP. AS STATED PARA 5, REF (C), DEPT. PLANNING TO MAKE SIMILAR PRESENTATION TO INDIAN EMB. HERE. ROBERT HENNEMEYER, SCA DEPUTY, HAS BEEN THOROUGHLY BRIEFED BY DEPT. OFFICERS, AND IS PREPARED TO MEET WITH APPROPRIATE GOI OFFICIALS TO DISCUSS USG INTEREST IN CONCLUDING CONSULAR CONVENTION WITHIN SHORTEST PERIOD OF TIME. EMB.'S ASSISTANCE IN THIS ENDEAVOR WILL BE APPRECIATED.

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